

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**CARLOS J. SILVA,**

**Plaintiff,**

**v.**

**Case No. 15-3007**

**RON EKIS, Sergeant, Topeka Police Department,  
in his individual and official capacity, et al.,**

**Defendants.**

**MEMORANDUM & ORDER**

This matter comes before the court upon defendant Ron Ekis's Motion to Dismiss (Doc. 57). Plaintiff's claims relate to an incident that occurred on January 20, 2013, in Topeka, Kansas. Plaintiff claims that defendants used, or failed to intervene to stop the use of, excessive force in violation of plaintiff's Fourth Amendment rights when they seized him, handcuffed him, tased him, beat him up, and cut off his hair. Plaintiff claims that defendants' actions resulted in plaintiff's five-day stay in the ICU and caused him emotional distress and lasting physical injury.

Defendant Ekis's current motion seeks to dismiss the Jane and/or John Doe defendants who are either City of Topeka Police Officers or Shawnee County Sheriff's Deputies and who allegedly took part in the January 20, 2013 interaction described in the pleadings and to dismiss Count II of the Amended Complaint (failure to intervene).

At the time defendant Ekis's motion to dismiss was filed, the court had not yet entered a scheduling order in this case, the parties had not completed discovery, and plaintiff had not yet been able to ascertain the identities of the Doe defendants. A scheduling order was entered by the court on June 14, 2017 (Doc. 80). According to the scheduling order, the discovery deadline is currently November 3, 2017 and any motions to amend or join additional parties are not due until 60 days after

entry of this order. There is currently no motion before the court to amend the pleadings or add a party. Therefore, the legal issues raised by defendant's motion relating to whether unknown parties can be added pursuant to Fed. R. Civ. P. 15 are not properly before the court at this time. Because the court declines to dismiss the Doe defendants, and defendant's argument relies on dismissal of the Doe defendants, the court will not address the argument that Count II should be dismissed at this time.

**IT IS THEREFORE ORDERED** that defendant Ekis's Motion to Dismiss (Doc. 57) is denied without prejudice.

Dated June 21, 2017, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**  
**United States District Judge**